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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

MARIN GENERAL HOSPITAL, A CALIFORNIA NON-PROFIT COMMUNITY HOSPITAL, Plaintiff and Respondent, v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 39, Defendant and Appellant.	A156497 (Marin County Super. Ct. No. CIV1900456)

Defendant International Union of Operating Engineers, Local 39 (Union) represents employees at plaintiff Marin General Hospital, A California Non-Profit Community Hospital (Hospital), who went out on strike in February 2019. As part of the strike, Union continuously rang two metal objects referred to as "the gongs" and delayed traffic into Hospital's entrance.

Union appeals from an order granting a preliminary injunction to Hospital, which restricts Union's picketing and noisemaking activities near Hospital's premises. Union contends

the injunction should not have been granted because Hospital did not prove all the criteria of Labor Code section 1138.1, which were a prerequisite to the court's issuance of a preliminary injunction in a case involving a labor dispute, and made no attempt to resolve the underlying labor dispute as is required by Labor Code section 1138.2. Union also contends the injunction was improper because it imposed decibel levels on the ringing of the gong, limited the noise from the gong without limiting other noises to the same level, and extended to 1,000 feet of the Hospital. Union finally argues the court failed to give notice of the hearing on the injunction to the public officials of Marin County, and complains that the injunction violates Code of Civil Procedure section 527.3, subdivision (b)(1) by prohibiting Union from "[g]iving publicity to" the facts of a labor dispute.

We conclude that substantial evidence supports the injunction to the extent it regulates excessive noise (including but not limited to the ringing of the gong), and that it was appropriate for the court to set particular decibel levels in doing so. We also conclude the injunction did not impermissibly prevent Union from giving publicity to the facts of the labor dispute and that Union is prevented from arguing on appeal that Hospital failed to give notice of the hearing to the proper authorities. The injunction is overbroad and vague, however, in regulating noisemaking conduct within 1,000 feet of the hospital and in not specifying the point at which the decibel level must be measured.

We also conclude the injunction is invalid to the extent it regulates conduct affecting the ingress and egress to Hospital. As Hospital admits, the trial court's finding that Union violated section 602.5 is not supported by substantial evidence, and this was the only violation of the law cited by the court that would have supported injunctive relief with respect to the picketing activities and the ingress and egress to Hospital.

I. STATEMENT OF THE CASE AND FACTS

A. *Factual Background*

Hospital is an acute care hospital that contains an emergency room (ER), an intensive care unit (ICU), a cardiac unit and a surgical unit, as well as the only birthing center and neonatal intensive care unit in the county. One side of Hospital faces Bon Air Road. Hospital is located in Greenbrae, an unincorporated area of Marin County, and is subject to the jurisdiction of the Marin County Sheriff's Department (Sheriff's). Additionally, Bon Air Road is subject to the jurisdiction of the California Highway Patrol (CHP).

Union represents both stationary engineers and biomed engineers who work at Hospital and who total about two dozen in number. On February 1, 2019, Union went on strike against Hospital. Picketing took place on a public sidewalk along Bon Air Road between two hospital entrances, beginning at 4:00 a.m. and extending into the evening. Approximately 20 picketers were present the first two days; after that, the number decreased.

Union constructed two frames from which metal objects or "gongs" were suspended. Union members then struck the gongs

with metal hammers for the purpose of drawing attention to the labor dispute. The gong ringing began at 6:00 a.m. on Friday, February 1, 2019, and continued more or less constantly into the evening. It began at 7:00 a.m. on Saturday, February 2 and continued for several hours, then stopped and started up again, ending at 6:00 p.m. On Sunday, February 3, it started at 8:30 a.m. The ringing stopped that day at about 10:30 a.m. after a sheriff's deputy came out and told protesters there was a Sunday "quiet" ordinance,[1] but it resumed on Monday, February 4 and was intermittent after that. The hours and duration of the ringing decreased on these days, but the volume was still the same.

The gong could be heard throughout Hospital, and Hospital received several complaints about the sound from patients and their families, as well as employees working in the mental health unit that was in the building furthest away from the gong. The noise interfered with some patients' ability to rest, which is important to the healing process, and caused agitation. Noise also has the potential to interfere with communications between patients and their doctors and nurses.

The chief operating officer of Hospital could hear the gong through the sound-proof, double paned windows of his office. A person not employed by Hospital who lived half a mile away

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[1] As Union points out, it appears the ordinance restricts noise from construction and related activities on Sunday, but does not treat other noisemaking activities differently depending on the day of the week. (Marin County Code, chapter 6.70; see § 6.70.030, subd. (5)(a)(iii), 5(b).)

heard the gong from his house, and the noise made it difficult for his three-year-old to nap. Hospital used an iPhone application to measure the sound of the gong periodically and took readings that ranged from 80 to 106 decibels, from a distance of 15 to 20 feet from the gongs.

In addition to beating the gongs, the picketers created traffic jams at the intersection of Bon Air Road and Schulz Memorial Drive, where most ambulances and private cars come to the ER. The picketers would push the crosswalk buttons, which would stop traffic for almost a minute, and then either fail to walk across the street or linger in the intersections. This activity created a significant traffic jam, particularly at shift change, when employees would be entering or leaving Hospital. The picketers did not block the ER, but their activities slowed ER access for patients arriving in private cars.

Hospital called the Sheriff several times after the strike's inception on February 1 asking it to stop the gong ringing and the blocking of traffic. According to the hospital's chief operating officer, sheriff's deputies came to the scene several times, but said they would not take action with respect to the picketing.

On Friday, February 1, deputies did ask Union to refrain from using the gong until 7:00 a.m. Union complied, but began banging the gong at 7:00 a.m. According to a Union representative, later that same day, a sergeant asked Union to delay ringing the gong until 10:00 a.m., and said his department would be checking the county codes. Union again complied but resumed banging the gong at 10:00 a.m. when they did not hear

from the sergeant. On the morning of Sunday, February 3, deputies persuaded Union to forego ringing the gong that day, citing the "Sunday quiet ordinance." (See fn. 1.)

Hospital also called the CHP, which has jurisdiction over Bon Air Road, regarding its concern that traffic was being disrupted by Union. A CHP officer came out, observed Union picketers overusing the crosswalk buttons, and spoke to the picketers, but they resumed their activities when the officer left.

B. *Hospital's Lawsuit*

On Monday, February 4, Hospital filed a civil complaint against Union alleging trespass, nuisance, unfair competition and tortious interference with prospective economic advantage, and seeking damages and injunctive relief. The complaint alleged that while Union had a legal right to publicize its labor dispute with Hospital, "it has no right to lay siege to Plaintiff's hospital with an array of illegal tactics, including blocking ingress and egress, committing acts of property damage, and generating abusive and raucous noise levels right outside hospital buildings where patients are being treated."

C. *Preliminary Injunction*

On February 8, Hospital filed an application for a temporary restraining order and order to show cause regarding a preliminary injunction. The application was accompanied by several declarations, including that of Julie Lavezzo, Hospital's Director of Safety and Security; Anna Sellenrieck, Hospital's Director of Patient Experience; Eugene Lewis, Hospital's Director of Human Resources; Jeff Viera, Hospital's Supervisor of Security

Operations; Jonathon Gordon, Hospital's Administrative Nursing Supervisor; and Sonnett Jones, the mother of a paralyzed patient at Hospital who was recovering from a motorcycle accident. Hospital also requested that the court take judicial notice of various local noise ordinances that place limits on noise as measured in decibel units.

The court set the matter for an evidentiary hearing on February 7. After a hearing at which the parties presented the evidence outlined above, the court issued a preliminary injunction. It made several findings, including: (1) the noise produced by the gongs was extremely loud and shrill and had resulted in extreme discomfort to patients; (2) the excessive noise adversely impacted patient recovery; (3) Union did not cease or reduce its noisemaking, despite Hospital's statements that it was having an adverse impact on patient health; (4) Union interfered with ingress and egress for vehicles at the primary entrance of the emergency room; (5) any delay in reaching the hospital put patient health at risk; (6) although Hospital had made multiple contacts with the Marin County Sheriff's Department, the Sheriff took no enforcement action against Union; and (7) unlawful acts had been committed, including violations of Penal Code sections 415, subdivision (2) [misdemeanor disturbing the peace] and 602.1 [misdemeanor intentional interference with business establishment] and Marin County Code, chapter 6.70 [local noise ordinance].

The court issued a preliminary injunction prohibiting Union from doing, attempting to do, or threatening to do the

following acts within 1,000 feet of Hospital: "a) interfering, delaying, or blocking ingress and egress to hospital entrances, driveways, parking lots and structures; b) creating, or causing to be created, any excessive noise, including but limited [sic] to the use of above-described "gongs," that exceeds the following exterior sound level in decibels as measured on a sound level meter using the A-weighted network (the level so read is designated dB(a) or dBA): [¶] 7:00 a.m. to 7:00 p.m. 50 dB(a) [¶] 7:00 p.m. to 7:00 a.m. 40 dB(a) [¶] Provided, however, that the above limits shall be further reduced by 5 dB(a), to 45 dB(a) and 35 dB(a) respectively, if the noise contains a steady, audible tone such as a whine, screech or hum, or if the noise is repetitive or impulsive (e.g., hammering or banging). These standards are comparable to other local noise ordinances. [¶] c) assisting or directing others to take any of the actions just described above. "

II. DISCUSSION

A. *Mootness*

Both parties indicate that although the labor dispute underlying the injunction has since been resolved, the case is not moot. We agree.

Hospital posted a $10,000 undertaking as a condition of the injunction pursuant to Labor Code section 1138.1, subdivision (b). That statute provides in relevant part: "No temporary restraining order or temporary injunction shall be issued except on the condition that the complainant first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage

caused by the improvident or erroneous issuance of the order or injunction, including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court."

As it appears Union would be entitled to proceed against the bond if we reversed the order granting a preliminary injunction, the matter is not moot. (See *Indio Police Command Unit Ass'n. v. City of Indio* (2014) 230 Cal.App.4th 521, 534 [case not moot where determination of which side should have prevailed is relevant to attorney fee award]; *Intern. Ass'n. of Machinists v. Eastern Airlines* (1st Cir. 1991) 925 F.2d 6, 10 [recovery of attorney fees in amount of posted bond under parallel federal statute].)

Moreover, an appellate court has the discretion to consider an issue that is technically moot if there may be a recurrence of the controversy between the parties. (*Environmental Charter High School v. Centinela Valley Union High School District* (2004) 122 Cal.App.4th 139, 144.) Hospital notes that if, in the future, Union engages in another strike, it would be beneficial to know whether the injunction in this case was valid. We will therefore decide the issues on the merits.

B. *Preliminary Injunction in Labor Case: Legal Principles and Standard of Review*

A preliminary injunction is an appealable order that we review for abuse of discretion. (Code of Civ. Proc., § 904, subd. (a)(6); *Oiye v. Fox* (2012) 211 Cal.App.4th 1036, 1047.) The

specific determinations underlying the superior court's decision are subject to appellate scrutiny under the standard of review appropriate to that type of determination; thus the superior court's express and implied findings of fact are accepted by the appellate court if supported by substantial evidence, and its conclusions of law are subject to de novo review. (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1136–1137.)

"Ordinarily an appeal from the granting of a preliminary injunction involves a very limited review of the [superior court's] exercise of discretion concerning two factors: (1) the likelihood that plaintiffs will ultimately prevail and (2) the interim harm plaintiffs will sustain if the preliminary injunction is denied compared to the interim harm defendant will suffer if the injunction is granted pending a final determination of the merits." (*Hunter v. City of Whittier* (1989) 209 Cal.App.3d 588, 595.) "[A]n abuse of discretion occurs when the lower court exceeds the bounds of reason or contravenes the uncontradicted evidence." (*Smith v. Adventist Health System/West* (2010) 182 Cal.App.4th 729, 739.)

The discretion to issue a preliminary injunction in a case based on a labor dispute is also tempered by two statues, Labor Code section 1138.1 and Code of Civil Procedure section 527.3. Both are designed to promote the rights of workers to engage in picketing and other activities related to collective bargaining and to prevent the evils which can occur when courts interfere with the normal process of dispute resolution in a labor case. (See

Ralph's Grocery Co. v. United Food & Commercial Workers Local 8 (2012) 55 Cal.4th 1083, 1103.)

Labor Code section 1138.1, subdivision (a) provides, "No court of this state shall have authority to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, except after hearing the testimony of witnesses in open court, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, of all of the following: [¶] (1) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained. . . . [¶] (2) That substantial and irreparable injury to complainant's property will follow. [¶] (3) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief. [¶] (4) That complainant has no adequate remedy at law. [¶] (5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

Section 527.3 of the Code of Civil Procedure, enacted in 1975 and known as the Moscone Act, limits the equity jurisdiction of California courts in cases involving a "labor dispute." (See *Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters* (1979) 25 Cal.3d 317, 322–323.) The limitations on injunctions apply to, among other things, picketing and otherwise giving publicity to the existence of a labor dispute.

(Code Civ. Proc., § 527.3, subd. (b).) The Moscone Act declares that the described labor activity "shall be legal, and no court . . . shall have jurisdiction to issue any restraining order or . . . injunction" prohibiting such activity. (*Ibid.*) However, "[i]t is not the intent of this section to permit conduct that is unlawful including breach of the peace, disorderly conduct, the unlawful blocking of access or egress to premises where a labor dispute exists, or other similar unlawful activity." (*Id.*, subd. (e).)

C. *Labor Code section 1138.1*

Union argues the preliminary injunction should not have been granted because the underlying case involves a labor dispute and the requirements of Labor Code section 1138.1, subdivision (a)(1), (2), (3) and (5) were not met. We conclude Union was properly enjoined from certain noisemaking activities, but agree that the portion of the injunction which targets the picketing activities must be stricken.

1. Subdivision (a)(1)

Labor Code section 1138.1, subdivision (a)(1) is satisfied only when "unlawful acts have been threatened and will be committed." The trial court found that Union's conduct in banging the gongs and impeding traffic violated Penal Code sections 415, subdivision (2) and 602.1, as well as chapter 6.70 of the Marin County Code.

Penal Code section 415, subdivision (2) provides that a misdemeanor is committed by "[a]ny person who maliciously and willfully disturbs another person by loud and unreasonable noise." Union does not argue the facts would not support a

finding its conduct was of a type prohibited by the statute, although it does suggest (unpersuasively) that the injunction failed to specify whether the court found a violation of Penal Code section 415.2 or Marin County Code, chapter 6.70 (it expressly found both). Union argues instead that as an unincorporated association, it was not a "person" within the meaning of Penal Code section 415, subdivision (2), and could not, therefore, violate the statute. We disagree.

Union's argument is predicated on Penal Code section 7, which provides in part that " 'person" includes a corporation as well as a natural person." This definition of "person" as *including* corporations does not necessarily *exclude* unincorporated organizations. (*Hassan v. Mercy American River Hospital* (2003) 31 Cal.4th 709, 717-718 [privilege under Civil Code section 43.6 applicable to "any person" who makes a communication to any hospital extends to entities as well as humans]; *Oil Workers Int'l. Union v. Superior Court* (1951) 103 Cal.App.2d 512, 570 [for purposes of statute governing contempt, an unincorporated association was a "person" under Code of Civ. Proc., § 17, which states that "the word 'person' includes a corporation as well as a natural person"]; see also *People v. Kareem A.* (2020) 46 Cal.App.5th 58, 72-74 [statute defining "person" to "include[]" certain categories of individuals was broad enough to extend to Department of State Hospitals].) Union was not entitled to violate provisions of the Penal Code merely because it was not incorporated. Substantial evidence supports the court's

determination that Union violated the law with respect to the gong ringing.[2]

We reach a different conclusion with respect to the picketing. Hospital concedes it did not demonstrate a violation of Penal Code section 602.1, which was the only one of the three unlawful acts specified in the preliminary injunction which pertains to the picketing on Bon Air Road as opposed to the ringing of the gong. Because there is no substantial evidence that Union violated this section[3] with respect to the picketing, the preliminary injunction's prohibition against "interfering, delaying, or blocking ingress and egress to hospital entrances, driveways, parking lots and structures" was invalid.[4]

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[2] Marin County Code section 6.70.020 provides, "It is unlawful for any person to make, continue, or cause to be made or continued, any loud, unnecessary or unusual noise which either annoys, disturbs, injures or endangers the comfort, repose, health or peace of others." Because the court properly found the gong ringing violated Penal Code section 415, subdivision (2), we need not consider whether Union also violated this provision, or whether the local noise ordinance is unconstitutionally vague.

[3] A violation of Penal Code section 602.1, subdivision (a) is committed by, "[a]ny person who intentionally interferes with any lawful business or occupation carried on by the owner or agent of a business establishment open to the public, by obstructing or intimidating those attempting to carry on business, or their customers, *and who refuses to leave the premises of the business establishment after being requested to leave by the owner or the owner's agent, or by a peace officer acting at the request of the owner or owner's agent. . . .*" (Italics added.) There was no evidence picketing Union members were on the actual premises of Hospital (as opposed to the public sidewalk), or refused to leave when asked to do so.

[4] At oral argument, Hospital argued for the first time that Union's activities in the crosswalk violated Vehicle Code section

2. Subdivision (a)(2)

Labor Code section 1138.1, subdivision (a)(2) requires proof that "substantial and irreparable injury to complainant's property will follow." Union argues that because the conduct alleged did not threaten Hospital with property damage, the subdivision was not satisfied. We disagree.

As Hospital points out, Labor Code section 1138.1 is modeled on the federal Norris LaGuardia Act (29 U.S.C. § 107). Courts interpreting that statute have construed an employer's "property" to include the right to conduct a lawful business. (*TriPlex Shoe Co. v. Cantor* (E.D. Pa. 1939) 25 F.Supp. 996, 998 *Knapp-Monarch Co. v. Anderson* (E.D. Ill. 1934) 7 F.Supp. 332, 336; see also *Westinghouse Broadcasting Co v. Dukakis* (D. Mass. 1976) 412 F.Supp. 580, 584.) Hospital's lawful business was giving health care to its patients—to the extent the ringing of the gongs interfered with this, there was injury to Hospital's business and thus to its property.

We need not decide whether noise alone would amount to injury of property if the employer were engaged in a different type of enterprise. In this case, substantial evidence supports a

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21950, subdivision (b) [pedestrian may not stop traffic unnecessarily within a crosswalk] and Penal Code section 602.11, subdivision (a) [obstructing entrance or exit of a health care facility]. We need not consider any issue which, although raised at oral argument, was not adequately raised in the briefs. (*Sunset Drive Corporation v. City of Redlands* (1999) 73 Cal.App.4th 215, 226.). We observe that the underlying labor dispute has now settled, but if another dispute arises between the parties and if Union engages in conduct that arguably violates either provision, nothing prevents the litigation of that issue.

finding the noise interfered with patient care and thus with the employer's business. This was enough to constitute injury to property under Labor Code section 1138.1, subdivision (a)(2).

3. Subdivision (a)(3)

Union states in passing that Hospital failed to satisfy Labor Code section 1138.1, subdivision (a)(3), which allows an injunction in a case involving a labor dispute to issue only when a party proves, "[t]hat as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief." Hospital presented evidence that patients at the hospital were greatly distressed as a result of the gong ringing and that this adversely affected their ability to rest and recover from serious illnesses and conditions. Substantial evidence thus supports the court's conclusion that the injury to patients which would be inflicted if no restriction was placed on the noise which Union could generate would exceed the injury to Union as a result of the injunction.

4. Subdivision (a)(5)

Union argues there was no substantial evidence "[t]hat the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection" within the meaning of Labor Code section 1138.1, subdivision (a)(5). We disagree.

Hospital presented evidence that it called the Sheriff several times to stop the ringing of the gong, and the Sheriff came out to speak with the protestors. With the exception of a

period of time on Sunday (and a few hours on Friday or Saturday), the gong ringing did not cease.[5] The Sheriff told Hospital's chief operating officer that it would not take any action to stop the protesters' activities.

The case is distinguishable from *United Food & Comm. Workers Union v. Superior Court* (2000) 83 Cal.App.4th 566, 579-581, which reversed an injunction issued against a labor union after concluding there was no evidence that law enforcement was unable or unwilling to furnish adequate protection. The injunction in that case was concerned with the scope of picketing, even though sheriff's deputies had come to the scene, had controlled the activities of the picketers when necessary, had protected persons and property, and had insured ingress and egress. (*Id*. at pp. 580-581.) Based on this history, there was no showing that law enforcement was either unwilling or unable to provide adequate protection. Here, by contrast, there was evidence that the Sheriff declined to reduce the volume of the gong ringing.

Union makes much of the fact it stopped ringing the gong on Sunday when asked to do so by the Sheriff, and argues that there is no showing it would not have complied with law enforcement's requests. Labor Code section 1138.1 focuses not on a union's compliance with requests by law enforcement (although their *un*willingness to comply might be evidence that law enforcement was unable to provide adequate protection). Rather,

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[5] Because the injunction must be modified to delete language purporting to place restrictions on Union's picketing activity, we focus on law enforcement's efforts with respect to the gong.

the question is what law enforcement was willing to do, and in this case, substantial evidence supports a determination that it was not willing to take action to reduce the noise from the gong.

Union also complains that Hospital called Sheriff at all, when the CHP had jurisdiction over Bon Air Road, and the state Parks Department had jurisdiction over Hal Brown Park, located a short distance away across Bon Air Road from Hospital. But it is undisputed that the Sheriff had jurisdiction over the noise affecting the unincorporated areas of Marin County, in which Hospital was located. The CHP or Parks Department was not the law enforcement entity to call with complaints about the volume and frequency of the gong.

D. *Labor Code § 1138.2*

Labor Code section 1138.2 requires that a party seeking an injunction make a reasonable effort to settle the underlying dispute before injunctive relief can be granted: "No restraining order shall be granted to any complainant involved in the labor dispute in question who has failed to comply with any obligation imposed by law, or who has failed to make every reasonable effort to settle that dispute . . . ." Union complains the record contains no evidence that at the time the injunction was sought, Hospital had made a reasonable effort to resolve the labor dispute. This ignores that Eugene Lewis, Hospital's Director of Human Resources and one of Hospital's lead negotiators in the dispute, filed a declaration in support of the injunction stating: "3. Before the expiration date of the CBA, Local 39 and Marin General had eight bargaining sessions over about two months. On January

18, 2019, Local 39 provided 10- day notice of its intent to strike at the Hospital, located at 250 Bon Air Road, Greenbrae, California. The strike was announced to begin on February 1, 2019, on an indefinite basis. 4. The last bargaining session occurred on January 29, 2019. Currently, there are no further bargaining sessions scheduled, although the parties have continued to communicate directly." This was substantial evidence that Hospital had tried to settle the dispute before seeking the injunction.

E. *Scope of Injunction*

Union suggests it was impermissible for the court to restrict the noise the strike generated to certain decibel levels when the Marin County Ordinance contained no decibel levels. (See *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 194-196 [discussing final subsequent environmental impact report for large redevelopment project, which described dB(a) levels applicable to various noises and included recommendations made by World Health Organization].) As Union notes, the Marin County Ordinance (which it alleges to be unconstitutionally vague) provides only that it is unlawful to make or cause to be made "any loud, unnecessary or unusual noise." We agree with Hospital that there was no requirement the injunction mirror the language of the local noise ordinance. Indeed, if the injunction had failed to specify a decibel level for the noise permitted, it would no doubt have been challenged on the ground that it was unduly vague.

At oral argument, Union seemed to concede that it was appropriate for the injunction to set particular decibel levels, although it argues the decibel levels set by the order were too low and did not adequately account for the ambient noise levels. The decibel levels were based on levels in comparable local noise ordinances and Union has not demonstrated they were unsupported by the record. As discussed below, the case must be remanded for a determination of where, exactly the noise levels should be measured, and at this time the court can specify the effect of ambient noise on those limits.[6]

Union claims the injunction was flawed because it limited use of the gong without limiting other noises in the area to the same level. We do not agree with this criticism. The injunction prohibited Union from creating "any excessive noise, including but limited to the use of the above described gongs," but in context it appears the court meant to prohibit excessive noise "including but *not* limited [sic]" to use of the gongs. To the extent Union is suggesting the court should have enjoined types of noise not generated by Union, this was beyond the scope of the injunction.

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[6] We note, by way of example, that the Napa County noise ordinance provides, "3. If the measured ambient noise level differs from that permissible within any of the first four noise limit categories above, the allowable noise exposure standard shall be the ambient noise level. . . . 5. Whenever possible, the ambient noise level shall be measured at the same location along the property line utilized in subsection (A)(2) with the alleged offending noise source inoperative. . . . ". (Napa County Code of Ordinances, section 8.16.070(A).)

Union argues the injunction was improper because there was no testimony by a medical expert testimony that noise of a certain level had an adverse impact on patients' health, only the testimony of the Director of Patient Experience, who was not a doctor, that patients had complained. But while this claim may affect the weight of the evidence, it does not render it insufficient to support the court's findings. The evidence supported a determination that the gong interfered with patients' rest, and that was sufficient to support an injunction enjoining excessive noise.

Union also faults the injunction for regulating conduct within 1,000 feet of Hospital's premises, arguing it did not have jurisdiction to extend the injunction to regulate noise levels outside Hospital property. It notes that a distance of 1,000 feet of Hospital's premises extends into the City of Larkspur, and notes that there was no showing the authorities of Larkspur were unable or unwilling to protect Hospital's property. Moreover, there was no need for an injunction governing conduct taking place beyond Bon Air Road. Hospital conceded at oral argument that the specified noise levels should be measured on Hospital property.

Given the ability of noise to travel beyond boundaries on the land, we reject any suggestion that the injunction was limited strictly to activities taking place on Hospital's premises. But the injunction was overly broad to the extent it regulated activities more than the distance of three football fields away, and did not specify the point at which such noise must be measured. The

injunction set decibel levels for noise, which was permissible, but did not specify where such measurements should be taken. As written, a noise that at its source exceeded the decibels allowed by the injunction might be deemed prohibited, even if it could not be heard by patients in the hospital. This is impermissible given that the primary basis for the injunction was patient well-being. It is one thing to say the court did not abuse its discretion in regulating noise in terms of decibel levels, but it should have either reduced the area to which the injunction applied or specified the location from which the decibel level reading should be taken—something to ensure that the noise prohibited was in fact likely to disturb Hospital's patients. (See *People v. Mason* (1981) 124 Cal.App.3d 348, 354.)

F. *Moscone Act*

Union claims the injunction is overbroad because it prevents bringing the labor dispute to the attention of the public in violation of the Moscone Act. Code Civil Procedure section 527.3, subdivision (b)(1) prohibits a court from issuing an injunction enjoining conduct "[g]iving publicity to, and obtaining or communicating information regarding the existence of, or the facts involved in, a labor dispute . . . by any [] method not involving fraud, violence or breach of the peace." Union argues its conduct did not violate Penal Code section 602.1, but this is a non sequitur because, as Hospital points out, a breach of the peace is governed by Penal Code section 415, and Union *was* found to be in violation of that statute.

G. *Notice to Officials*

Labor Code section 1138.1, subdivision (b) requires a hearing on an injunction in a labor case to be held "after due and personal notice thereof has been given, in the manner that the court shall direct . . . to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property." Union claims the injunction is void because Hospital failed to comply with this provision. Union has forfeited any right to object to the notice given.

At the outset of the hearing, Hospital's counsel stated he had "a notice to the sheriff that we are here today with the papers, which is also required under the various statutes, and we have a copy of that that we can provide." At the end of the hearing, another attorney representing Hospital stated on the record that she was giving the court a copy of that notice. Counsel for Union did not object to the notice given at either juncture and cannot complain about the notice given on appeal. (See *Remillard Brick Co. v. Dandini* (1941) 47 Cal.App.2d 63, 66 [counsel for both parties and court assumed application for temporary injunction was properly before court; this requires rejection of argument that court was without jurisdiction to proceed].).

H. *Conclusion and Remedy*

Because the injunction is invalid to the extent it prohibits acts interfering with ingress or egress, and because aspects of the injunction restricting noisemaking activities are vague or overly

broad, the injunction must be modified by (1) severing the portion enjoining Union from "interfering, delaying or blocking ingress and egress to hospital entrances, driveways, parking lots and structures;" and (2) deleting the provision regulating Union conduct within 1,000 feet of Hospital's premises; (3) specifying where the noise levels must be measured; (4) specifying the effect and method of measuring the ambient noise when calculating the decibel levels set forth in the injunction. We will remand for this purpose.

In remanding the case, we are cognizant that the underlying labor dispute has been resolved. It may be a waste of judicial resources to require the trial court to further refine an injunction that has no immediate impact on the parties' conduct. "The law neither does nor requires idle acts." (Civ. Code, § 3532.) We have previously explained the matter is not moot because Union's ability to recover fees remains in dispute. Nothing in this opinion should be construed to require the court, on remand, to do more than is necessary to resolve issues pertaining to Union's entitlement to fees.

III. DISPOSITION

The case is remanded for further action consistent with the views expressed in this opinion. The parties shall bear their own costs. (Cal. Rule of Court, rule 8.278(a)(3).)

NEEDHAM, J.

We concur.

SIMONS, ACTING P.J.

BURNS, J.

(A156497)